

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MARK WEBB, et al.,

Plaintiffs,

v.

VOLVO CARS OF N.A., LLC,
VOLVO CAR CORPORATION,
VOLVO CAR UK LIMITED, and
VOLVO CARS OF N.A., INC.,

Defendants.

Civil Action No. 13-CV-2394-MMB

**MOTION OF VOLVO CAR UK LIMITED
TO STRIKE OR REJECT UNAUTHORIZED AND
PROHIBITED SUBSTANTIVE CORRESPONDENCE**

Defendant Volvo Car UK Limited (“VCUK”) moves the Court to strike or reject two separate substantive letters addressed to the Court that were served on counsel for VCUK by Mr. Malofiy late in the day on December 11, 2013. As grounds for and in support of this motion, VCUK states as follows:

1. At the hearing in this matter on December 6, 2013, the Court allowed VCUK an opportunity to further respond to *Simeone v. Bombardier-Rotax GmbH*, 360 F. Supp. 2d 665 (E.D. Pa. 2005), and it instructed VCUK to make that response by letter no later than December 9, 2013. VCUK believes its letter (DE No. 43) complies precisely with the Court’s instructions.

2. Without seeking or receiving permission from the Court, Plaintiffs' counsel has now served VCUK's counsel with two separate letters, both addressed to the Court, and both offering further substantive argument in opposition to VCUK's motion to dismiss for lack of jurisdiction.

3. The letters contain numerous inaccuracies and continue counsel's troubling penchant for unsupported attacks and unprofessional invective, including falsely stating that VCUK "**does not dispute**" *contentions* that counsel mischaracterizes as "**facts**," that VCUK and other non-party subsidiaries of Volvo Car Corporation ("VCC") are "shell" companies designed to "shield" VCC "from liability for wrongdoing," that VCC is "relying on the sham incorporation of its subsidiary," and that "VCUK is clearly not a legitimate corporation." VCUK does not intend to dignify these false statements with a formal response unless the Court, knowing that VCUK vehemently denies them, directs it to do so. However, counsel's conduct, if unabated, will result in a further motion for sanctions.

4. As noted, counsel did not seek or receive the Court's permission to respond to VCUK's December 9, 2013 letter or to submit what amounts to a *second* sur-reply in opposition to VCUK's motion to dismiss for lack of jurisdiction. Counsel appears to justify his conduct with the claim that "[a]t the hearing the Court stated it was unfamiliar with" the alter-ego theory of personal jurisdiction. Counsel for VCUK do not recall such a statement from the Court;

instead, this Court demonstrated itself well familiar with Plaintiffs' arguments for exercising personal jurisdiction over VCUK. Even if the statement had been made, it would not justify counsel's disregard for this Court's own rules for pretrial and trial procedures in civil cases, which specifically provide that "correspondence on substantive matters is not accepted and will not be considered."

5. At the hearing, the Court granted Plaintiffs' counsel the opportunity to conduct a limited deposition to attempt to refute the record before the Court. The Court stated that if Plaintiffs declined that opportunity, the Court intended to grant VCUK's motion to dismiss. Plaintiffs have now confirmed by one of their unauthorized letters that they do not intend to proceed with the jurisdictional deposition that the Court allowed.

FOR THESE REASONS, Volvo Car UK Limited respectfully requests the Court to strike or reject counsel's improper and unauthorized correspondence and grant its motion to dismiss for lack of personal jurisdiction.

Dated: December 12, 2013 Respectfully submitted,

By: /s/ Peter W. Herzog III
Peter W. Herzog III (pro hac vice)
BRYAN CAVE LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Phone: (314) 259-2000
Fax: (314) 259-2020
pwherzog@bryancave.com

Richard B. Wickersham, Jr.
POST & SCHELL, P.C.
Four Penn Center, 13th Floor
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103
Phone: (215) 587-6612
Fax: (215) 320-4875
rwickersham@postschell.com

Attorneys for Volvo Car UK Limited

Certificate of Service

I, Peter W. Herzog III, certify that the foregoing was electronically filed on December 12, 2013 using the Court's CM/EMF system, and was thereby served upon all registered users in this case.

By: /s/ Peter W. Herzog III